

APPEAL from a Decree of Dismissal made in the High Court of Chancery, in Ireland, the 21st of June, 1700. in a Cause wherein the Appellant was Plaintiff, and the Respondents Defendants.

Nathaniel Disbrow, Esq; Appellant.

{ Honer Kerin Relict, and surviving Executrix of
her late Husband, Daniel Kerin, Esq; John
Kerin, Gent. Samuel Freeman, Esq; and Eliza-
beth his Wife, the said John and Elizabeth being
Son and Daughter of the said Daniel and Honer
Kerin, Respondents.

The Respondents C A S E.

- (80) IN the Year (80) Daniel Kerin became bound for the Appellant, to Gideon Delanne, for 100 l. and the Appellant gave him a Counter-bond to indemnify him.
- (82) In (82) the said Daniel Kerin became further bound, for the Appellant, to Thomas Tilson, for 150 l.
- (82) And then the Appellant having a Lease of some Lands in the County of Tipperary, under the Duke of York, worth, as he says, 150 l. per Annum; above the reserved Rent, did, by Indenture dated the 6th of April, (82) in consideration of 250 l. Demise the said Lands to the said Daniel Kerin, his Executors, &c. for seventeen Years, from the 25th of March then last past, at 5 s. per Annum; which Lease is supposed to be made for Securing Daniel Kerin from the above Debts, there being an Indorsement on the said Lease, in *hac Verba* (viz.) Memorandum, That if the within named Nathaniel Disbrow does discharge the said Daniel Kerin from the Sum of 250 l. Sterling, for which the said Daniel Kerin is bound for the said Nathaniel Disbrow, then the within Lease to be void.
- (88) In (88) Daniel Kerin died, having made his Wife Honer, and his Son Nathaniel, Joynt Executors; in February (88) this Nathaniel
- (89) went with other Protestants for England, to joyn his now Majesties Forces there; and was afterwards kill'd at a Sea-Fight at Bantry-Bay, in the Year (89).
- In (98) the Appellant returned from England, where he had lived for many Years, and was then forced to pay the 100 l. Debt, and Interest due to Delanne; the other Debt, of 150 l. due to Tilson, being long before paid by Daniel Kerin.
- (99) In (99) the Appellant brought his Bill in the Chancery of Ireland, against the Respondents, setting forth the above Lease, made by him to Daniel Kerin in (82) and suggesting, that pursuant to such Lease, the said Daniel Kerin entered on the demised Premises, and received the Yearly Rents, Issues, and Profits thereof, worth, as he says, 150 l. per Annum, above the reserved Rents, upon no other Account then only to Indemnify him against the said 250 l. Debts, which the Appellant pretends to have paid since he
- (98) returned into Ireland; in (98) and therefore to Compel the Defendants to Account for the Yearly Rents, Issues, and Profits of the said Lands, and to have Satisfaction acknowledged on Record of a Judgment, entered up against him, by Daniel Kerin, on the Counter-bond, to Indemnify him from Delanne's Debt, is the Scope of this Bill. In which Bill there is no manner of mention made of any Assignment of the said Lease to Charity Disbrow, by Daniel Kerin, for 150 l.
- The Respondents in their Answer to the said Bill, said, They believed Daniel Kerin was bound for the Appellant to Delanne and Tilson in the Sums afore-mentioned, but knew nothing of the Lease made to Counter-Secure him; and deny'd, that they, or the said Daniel, to their Knowledge or Belief, had ever any Possession or other Interest in the Lands in the Lease mentioned, &c.
- The Plaintiff reply'd, and examined Witnesses, but the Defendants examined no Witnesses; the Plaintiff proves he paid the 100 l. due to Delanne (which was confessed by the Defendants Answer, and the Counter-bond given up) but does not prove he paid the 150 l. to Tilson, which was deny'd by the Answer, the same having been long since paid by Daniel Kerin.
- There is not the least proof, that Daniel Kerin ever entered on the Lands in the Lease: but 'tis probable he never had any Possession therein, having brought an Ejectment to recover the same, in (85) from Charity Disbrow, but no proof what further was done on that Ejectment, only 'tis said, He, and the said Charity agreed, and that he assigned his Interest to her for 150 l. but no such Deed or Assignment is proved, or exhibited, nor produced in the Cause.
- (85) The 13th of June, 1700. the Cause was first heard, in the Lord Chancellor's absence, before Lord Chief Justice Hely, and Mr. Baron Ecklin, and the Bill appearing to be lay'd for an account of the Rents, Issues and Profits of the Lands, as if the said Daniel Kerin had actually enjoyed them, for 18 Years past, when he never was in Possession thereof, nor was any of the Persons in Possession made Parties to the Bill, nor examined in the Cause: So that for ought yet appearing in the Plaintiff's proofs, the said Lands are still held and enjoyed by the Plaintiff himself. And as to Daniel Kerin's pretended Assignment to Charity Disbrow, there is not the least mention thereof in the Bill, nor any due proof in the Depositions, and therefore the Court was for dismissing the Bill; but the Plaintiff's Council praying a further day to speak to it.
- June, 1700. The 21st of June, 1700. the Cause was further heard before the Lord Chancellor, and his Lordship declared, There could be no Decree grounded upon such an improper Bill, and such insufficient Proofs; and that he did not see how a supplemental Bill could help the Plaintiff, and therefore dismiss the Bill with Costs; but in case the Plaintiff will not further trouble the Defendants in this matter, he is to pay no Costs.
- Now, upon this Decree of Dismissal, the Plaintiff brings his Appeal *inter alter*, suggesting that there is a Judgment of 400 l. against him, on a Counter-bond, for the Debt due to Delanne, which he has satisfied, and so ought to be relieved against that Judgment; whereas the Defendants know nothing of any such Judgment; nor does the Bill mention in what Court such Judgment was entered, nor was one word spoke of it on either of the two Hearings of the Cause, as appears by the Registers Notes on those Hearings; and the whole Matter is still left open to any new Bill the Plaintiff shall think fit to bring, in order to put the said pretended Assignment of the Lease in Issue.
- But the chief End of the Appeal seems to be out of some Design to avoid a new Bill, for that then the Defendants will be at Liberty, as of right they ought, to put the said Assignment in Issue, and examine their Witnesses thereto, and so will be able to prove all the Plaintiff's Demands to be very Groundless and Vexatious.
- Note, likewise, the Order of Dismissal was by some surprize taken out, and drawn up by the Plaintiff, without inserting the true Grounds and Reasons on which it was granted, out of Design to make the better Colour for his present Appeal.
- And it plainly appears, that the Appellant hath no just Demands against the Respondents; for that the Sum by him suggested to be the Consideration of the pretended Assignment, and for which he would now have an Account, is 150 l. only, which is but equal to the Sum paid by the said Daniel Kerin for the Debt payable to Tilson, over, and besides which, the Respondent Honer hath been at above 40 l. Charges in Defence of Suits against her, for the other Debt due to Delanne.
- So that upon the whole Matter, the Respondents ought rather to have an Account from the Appellant, than the Appellant from the Respondents.
- And therefore the Respondents hope to be forthwith dismiss'd with good Costs for this vexatious Proceedings.
- The Respondent, Freeman, has served as a Captain in his Majesty's Army, through all the late War in Ireland and Flanders, and is forced to come from his Post in Ireland, to attend this most groundless Appeal.

William Comper.